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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEVEN MARVIK,

Plaintiff,

vs.

CONNIE J. STEINHEIMER, et al.,

Defendants.

3:11-CV-0641-ECR (VPC)

ORDER

October 24, 2011

Before the court is plaintiff's application to proceed *in forma pauperis* (#3), and a request for appointment of counsel (#1).

Before the court will consider plaintiff's application to proceed *in forma pauperis* (#1) the plaintiff must lodge a proposed complaint which states a claim for which relief may be granted so that it can be filed should the plaintiff's application to proceed *in forma pauperis* (#1) be approved. Moreover, the court finds that plaintiff's declaration is insufficient for the court to act on the application for *in forma pauperis* status. The court will require plaintiff to complete the application to proceed *in forma pauperis* that is attached to this order.

Although plaintiff has filed no complaint, the court assumes at present that plaintiff may intend to file a civil rights action. A litigant in a civil rights action does not have a Sixth Amendment right to appointed counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. *Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 109 S.Ct. 1814 (1989). In certain exceptional circumstances, the court may request the

1 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). *Terrell v. Brewer*, 935 F.2d 1015 (9th
2 Cir. 1990); *Wood v. Housewright*, 900 F.2d 1332 (9th Cir. 1990). Without a reasonable method of
3 securing and compensating counsel, this court will seek volunteer counsel only in the most serious and
4 exceptional cases. A finding of such exceptional circumstances requires that the court evaluate both the
5 likelihood of success on the merits and the *pro se* litigant's ability to articulate his claims in light of the
6 complexity of the legal issues involved. Neither factor is controlling; both must be viewed together in
7 making the finding. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991), citing *Wilborn v.*
8 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). The court exercises discretion in making this finding.

9 **IT IS HEREBY ORDERED** as follows:

- 10 1. Plaintiff's request for appointment of counsel is **DENIED** without prejudice.
- 11 2. The clerk shall **SEND** to plaintiff a form for a civil rights complaint. Plaintiff shall lodge
12 a proposed complaint which states a claim upon which relief may be granted with the
13 court within twenty (20) days of the date of this order. Plaintiff is cautioned that his
14 failure to lodge such a complaint with the court may result in dismissal of this action.
- 15 3. The clerk shall **SEND** to plaintiff the attached application to proceed *in forma pauperis*.
16 Plaintiff shall also lodge a completed application to proceed *in forma pauperis* within
17 twenty (20) days of the date of this order.

18 Dated this 24th day of October 2004.

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21 UNITED STATES MAGISTRATE JUDGE
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United States District Court
District of Nevada

Plaintiff/Petitioner,

v.

**APPLICATION TO PROCEED
IN FORMA PAUPERIS**

Defendant/Respondent,

CASE NUMBER:

I, _____, declare that I am the (*check the appropriate box*):

_____ Plaintiff/Respondent

_____ Defendant/Respondent

in this case. I am unable to prepay the fees of this proceeding or give security because of my poverty. I acknowledge and consent that a portion of any recovery, as directed by the court, shall be paid to the clerk for reimbursement of all fees incurred by me as a result of being granted leave to proceed *in forma pauperis*.

In further support of this application, I answer the following questions:

1. Are you presently employed? _____ Yes _____ No
 - a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer. (List gross and net salary.)
 - b. If the answer is "no," state the date of your last employment and the amount of the salary or wages per month which you received.

2. Have you received, within the past twelve months, any money from any of the following sources?

- | | | | |
|----|--|------------------------------|-----------------------------|
| a. | Business, profession or other form of self-employment? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| b. | Rent payments, interests or dividends? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| c. | Pensions, annuities or life insurance payments? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| d. | Gifts or inheritances? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| e. | Any other sources? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

3. Do you have any cash, or do you have money in checking or savings accounts (include any funds on deposit with a bank, credit union, savings and loan, etc.)?

☐ Yes ☐ No

If the answer is "yes," list the amount of cash. If you have money in financial institutions, list the location of the institution(s), each account number, the type of account, and the total amount or balance in the account.

4. Do you own or have any interest in real estate, stocks, bonds, notes, trusts, jewelry, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

☐ Yes ☐ No

If the answer is "yes," describe the property, its location and state its approximate value.

5. Do you receive any income from disability, unemployment compensation, worker's compensation, Social Security, or any other pension?

☐ Yes ☐ No

If the answer is "yes," describe the source and list the amount received each month.

6. Does your spouse receive any income from employment, disability, worker's compensation, unemployment compensation, Social Security, pension(s), or any other source?

_____ Yes

_____ No

If the answer is "yes," state the amount of your spouse's salary or wages per month, and give the name and address of his/her employer. (List gross and net salary.) For any other income, describe the source and list the amount received each month.

7. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support each month.

8. Have you placed any property, assets, or money in the name or custody of anyone else in the last two years?

_____ Yes

_____ No

If the answer is "yes," give the date, describe the property, assets, or money, and give the name of the person(s) in custody of the item and the reason for the transfer.

9. List your living expenses per month (List the amounts for rent, utilities, etc.).

10. List any amounts you owe and the monthly payments (including mortgages, automobiles, etc.).
11. List any and all other assets and liabilities.

ACKNOWLEDGMENT

I, the undersigned, acknowledge that I have read the foregoing and that the information contained therein is true and correct to my own knowledge and belief.

Further, I acknowledge that if any of the information included in this application to proceed *in forma pauperis* is false or misleading, I understand that sanctions may be imposed against me. Those sanctions may include, but are not limited to, the following:

1. dismissal of my case with prejudice
2. imposition of monetary sanctions
3. perjury charges

Further, I hereby authorize the United States District Court, District of Nevada, or its representative, to investigate my financial status, and authorize any individual, corporation, or governmental entity to release any such information to the said court or its representative.

Further, I acknowledge and consent that a portion of any recovery, as directed by the court, shall be paid to the clerk for reimbursement of all fees incurred by me as a result of being granted leave to proceed *in forma pauperis*.

Dated this ____ day of _____, 20 ____.

Signature of Applicant

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. **I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.**
See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Dated this ____ day of _____, 20 ____.

Signature of Applicant